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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th March 2006

No. 2249—li/1(BH)-70/2004 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th February 2006 in Industrial Dispute Case No. 225 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, M/s Polar Latex Limited, Somanathpur, Balasore and its workman Shri Debendra Nath Mahana, At/P.O. Ichhapur, Dist. Bhadrak was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 225 OF 1995

Dated the 14th February 2006

Present :

Shri P. K. Sahoo, o.s.J.S. (Jr. Branch)
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Managing Director .. First Party—Management
M/s Polar Latex Limited
Somanathpur, Balasore.

And

Shri Debendra Nath Mahana .. Second Party—Workman
At/P.O. Ichhapur, Dist. Bhadrak.

Appearances :

For the First Party—Management .. Shri B. K. Mohanty

For the Second Party—Workman himself .. Shri D. N. Mahana

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 10202(5)-L.E., dated the 9th August 1995 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the action of the management of M/s Polar Latex Limited, Somanathpur, Balasore is terminating the services of Shri Debendra Nath Mahana with effect from the 20th March 1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. By way of this reference workman Shri Debendra Nath Mahana has challenged the legality and justifiability of the decision of the management of M/s Polar Latex Limited, Somanathpur, Balasore (in short the management) in terminating his services with effect from the 20th March 1993.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman was appointed as Trainee-C under the management for a period of one year with effect from the 20th April 1992 for a stipendary amount of Rs. 700 per month. According to the workman although he was discharging his duties with much sincerity, devotion and to the best satisfaction of the authorities but surprisingly his traineeship was illegally terminated by the management on the 20th March 1993 on the allegation of printing forged canteen coupons and utilising the same for consumption of food items from the canteen causing loss to the exchequer of the management. While in employment as trainee a chargesheet came to be issued against him and finally his services were terminated by the management with effect from the 20th March 1993. Despite his approach as no fruitful result was forthcoming he was constrained to raise a dispute before the District Labour Officer, Balasore but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Balasore ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. It is categorically averred in the statement of claim that the management forcibly obtained the signature of the workman in confessional letter and under pressure he was compelled to put his signature on the said letter confessing his guilt. According to the workman, the management had not conducted any regular domestic enquiry and thereby violated the principles of natural justice by not allowing him to properly defend his case during enquiry into the allegation levelled against him. It is categorically averred in the statement of claim that the action taken by the management in terminating his services was illegal and unjustified. While seeking industrial adjudication the workman has claimed for his reinstatement in service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman contended *inter alia* that the workman was appointed as Trainee-C under the management with effect from the 29th April 1992 for a period of one year and as per Clause-1 of the terms of appointment, the traineeship would be terminated at any time during the period of one year for unsatisfactory work or conduct without any notice. The

terms of appointment further provided in Clause-6 of the appointment letter that the completion of traineeship would not entitle the workman for being considered for employment in the company. However, if his performance and conduct during the traineeship was found to be satisfactory and suitable vacancy existed at the time his training concluded his case could be considered for absorption in the Company's roll in a suitable grade with designation. The appointment letter further stipulates that if the management is not satisfied with the work or conduct of the trainee it shall have the right to terminate the traineeship at any time without any notice. It is averred in the written statement that there is a canteen inside the factory premises where food is being supplied at a subsidised rate to the employees of the factory. For this purpose canteen coupons have been printed by the company for the value of Re. 1 and Rs. 2 enabling a workman to take his food in the canteen by producing such coupon. A workman is required to purchase the coupon from the Time Office of the factory and utilise the same for taking food worth of Rs. 4 only. The canteen contractor after receiving coupons from the employees uses to supply food to the employees. The canteen contractor preserves the coupons and submits same latter on to the management to collect the amount being the value of the number of coupons received by him from the employees for consuming food. Surprisingly on the 26th October 1992 it was detected that some coupons already submitted by the contractor were forged and were not printed by the Company. These coupons contained token No. 195, 203 and 290. On verification it was found that the concerned workman had used those coupons by putting some initial on it and had consumed food from the canteen. Thereafter the management initiated a fact finding enquiry where the concerned workman was found guilty of the charges levelled against him for forging the canteen coupons. The workman was asked to submit his explanation to the charges levelled against him and accordingly the workman submitted his explanation admitting his guilt. In view of such admission the management decided to terminate the traineeship of the workman since his involvement in the alleged misconduct during traineeship was detrimental to the interest of the Company. As the conduct of the workman did not inspire confidence so as to allow him to continue in training any longer, the management vide its letter, dated the 20th March 1993 before expiry of the training period, in accordance with Clause-1 of the appointment letter terminated the traineeship which, was, according to the management legal and justified. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed.

ISSUES

(i) Whether the action of the management of M/s Polar Latex Limited, Somanathpur, Balasore in terminating the services of Shri Debendra Nath Mahana with effect from the 20th March 1993 is legal and/or justified ?

(ii) If not, to what relief he is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. On the otherhand, the management has examined two witnesses namely Shri Ramesh Chandra Samal and Shri Dharendra Nath Mohanta as M. Ws. 1 and 2

and has relied upon several documents including the appointment letter, termination order, charge-sheet, confessional statement, fact finding enquiry report, etc. marked as Exts. A to L respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

It reveals from the evidence of the workman that in the year 1992 he was appointed on probation under the management. During Durga Puja Holidays he was on leave and when he returned to office he took his meal in the canteen. A boy gave him a coupon and basing on that coupon he took the meal. But the contractor of the canteen told him that those two coupons given by him were false. Later on he was called by the management and was compelled to give in writing that such launch coupons were brought from outside. Since the management threatened to take away his service, out of fear he complied the same but on the next day he was not given any work. During cross-examination he admits that he joined as trainee under the management on the 29th April 1992 vide Ext. A, and submitted his joining report vide Ext. B. He admits the letter Ext. C addressed to the A. P. M. and the letter addressed to the Works Manager, Polar Latex Limited under Ext. D (already relied upon by the management) and has proved the same during evidence. He has denied the suggestion of submitting false coupons while taking his food in the canteen. It has been further suggested that his services were terminated according to the conditions indicated in the appointment letter, Ext. A and his own statement under Exts. C and D to which he has negatively replied. On the other hand, the management through M. Ws. 1 and 2 has successfully proved and established that the workman while taking his meal in the canteen of the factory had used forged canteen coupons. The perusal of the evidence already adduced by the management through M. Ws. 1 and 2 clearly emerges that the workman joined in the establishment of the management as trainee with effect from the 25th April 1992 and continued in his traineeship till the 20th March 1993 when his traineeship was terminated by the management on the allegation of forging canteen coupons. A preliminary enquiry was initiated by the management into the allegation levelled against the workman. After completion of the said fact finding enquiry, the Enquiring Officer submitted his report vide Ext. F. During enquiry the workman confessed his guilt in writing vide Ext. C. Thereafter a charge-sheet came to be issued against the workman vide Ext. H and the workman was directed to submit his explanation. Accordingly the workman submitted his explanation on the 17th November 1992 vide Ext. J. After careful consideration of the enquiry report and all other relevant documents the management terminated the traineeship of the workman with effect from the 20th March 1993 vide Ext. K. It further reveals from the evidence of M. W. 2 that the training period was for one year but before completion of the training period the traineeship was terminated with effect from the 20th March 1993 as per the terms and conditions of service stipulated in the appointment letter vide Ext. A. Nothing material and substantial has been elicited by the workman to discard or discredit the evidence of both the witnesses already examined on behalf of the management. Besides, the evidence of M. W. 2 has not been challenged and disputed by the workman during cross-examination. Therefore the evidence of M. W. 2 remains unchallenged and after carefully examining the evidence already adduced on behalf of the management, absolutely I find no cogent reason to disbelieve their evidence on the above context.

8. The stand taken by the management before this court is that the workman had used the forged coupons while taking his meal in the canteen of the factory and basing on the allegation of forging the canteen coupons the management had initiated a fact finding enquiry in which the workman was found guilty of printing the forged coupons and using the same while taking food in the canteen. It is further submitted on behalf of the management that during the said enquiry the workman admitted to have printed the forged coupons at Bina Press, Naya Bazar, distributed the same to others and used the said forged coupons while taking food in the canteen. The further submission on behalf of the management is that since the conduct of the workman did not inspire any confidence so as to allow him to continue in training any longer, the management was constrained to terminate the traineeship with effect from the 20th March 1993 and therefore, the workman is not entitled for any relief. On the other hand, the claim of the workman is that he was not aware of the above facts as alleged against him. In support of their respective cases both the management and the workman have laid evidence. The management has also relied upon several documents such as, appointment letter, joining letter, letter addressed to the A. T. M. by the workman admitting his guilt, explanation submitted by the workman, the coupons, fact finding enquiry report, etc. marked as Exts. A to L respectively. After carefully examining the evidence of the workman it is evident that he has nowhere proved and established that he was not involved in committing the above misconduct. On the other hand, the perusal of the evidence already adduced by the management and the documents relied upon by it, clearly reveals that the act of misconduct during the traineeship has duly been proved by the management against the workman before fair and proper fact finding enquiry in compliance with the principles of natural justice. The workman has also nowhere challenged the evidence adduced on behalf of the management. The perusal of the fact finding enquiry report vide Ext. F clearly emerges that the workman was found guilty of printing the forged coupons, its distribution and use. After carefully examining the documents relied upon by the management and especially the confessional statement as well as the letter submitted to the Works Manager vide Exts. C and D respectively, I am of the considered view that the performance of the workman as a trainee during the traineeship was found not satisfactory. The order of appointment vide Ext. A itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to the workman could be put to an end to at any time without any notice. Completion of traineeship would not entitle the workman for being considered for employment in the company but if his performance and conduct during the traineeship was found to be satisfactory and suitable vacancy was existed at the time of completion of training then his case would be considered for absorption in the company's roll in a suitable grade and designation. The evidence already tendered by the parties clearly shows that the workman had been appointed as Trainee-C for a period of one year with effect from the 29th April 1992 but during the traineeship the performance of the workman was found not satisfactory which resulted in terminating the traineeship with effect from the 29th March 1993. The workman was indulged himself in such activities which were considered by the management to be unsatisfactory conduct on the part of a trainee. The act of misconduct has duly been proved during the enquiry and the workman was found guilty of charges levelled against him which leads me to arrive at a just conclusion that the workman had violated the terms and conditions stipulated in Ext. A. The management did not place any confidence so as to allow him to continue as trainee any longer and infact terminated the traineeship with effect from the 20th March 1993 since the terms of employment clearly provide

that if the service of an employee was found not satisfactory it could be put to an end before expiry of the stipulated period without issuing any notice. On the whole I find substance in the stand taken by the management. On the other hand, the workman has miserably failed to substantiate his own case to the effect that his performance during traineeship was satisfactory and that he had completed the training period under the management successfully and satisfactorily as per the terms and conditions reflected in the appointment letter Ext. A. Therefore, the assertion of the workman to the effect that the decision of the management in terminating his services with effect from the 20th Marh 1993 was illegal and unjustified is without substance. After carefully examining the evidence led by the parties and the documents relied upon by the management I am led to hold that the action of the management in terminating the services of the workman with effect from the 20th March 1993 was legal and justified. In that view of the matter, the workman is not entitled to the relief of reinstatement with back wages. Both the above issues are answered accordingly.

9. Hence it is ordered.

ORDER

That the action of the management of M/s Polar Latex Limited, Somanathpur, Balasore in terminating the services of Shri Debendra Nath Mahana with effect from the 20th March 1993 is legal and justified. In such view of the matter, the workman is not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
14-2-2006
Presiding Officer,
Labour Court, Bhubaneswar

P. K. SAHOO
14-2-2006
Presiding Officer,
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government